

Docket No. 201,921

Respondent appeals from an October 27, 1995 Order entered by Special Administrative Law Judge William F. Morrissey.

The issue to be considered on appeal is whether claimant's injury arose out of and in the course of his employment.

After reviewing the record and considering the arguments of the parties the Appeals Board finds it more probable than not that claimant's injury did arise out of and in the course of his employment with respondent and the Order by the Special Administrative Law Judge should be affirmed.

Claimant testified he was injured when attacked by the brother of the owner of Ramona's Convenience Store while claimant was in the back room performing payroll duties. Respondent concedes that is more probably true than not that an argument took place at Ramona's Convenience Store. Respondent, however, disputes claimant's allegation and testimony that a fight took place at the store. The respondent further asserts that the fight related to a personal debt, not work activities.

Claimant, on the other hand, asserts that the fight resulted from the fact that claimant did not want Mr. Danny Atie to be employed for the respondent. Claimant objected to his working at the store because he considered Mr. Atie to be rude to the customers. According to the claimant, Mr. Atie asked him why he did not want him working there. Claimant told him that he had talked to his brother and the next thing claimant knew, Mr. Atie was choking him.

The decision in this case turns largely upon the credibility of the witnesses. The Special Administrative Law Judge had the opportunity to observe those witnesses and found the claim to be compensable. The Appeals Board agrees that the evidence establishes that the fight stemmed, at least in part, from claimant's opposition to hiring Mr. Atie. The Appeals Board, therefore, affirms the decision by the Administrative Law Judge.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order entered by Special Administrative Law Judge William F. Morrissey dated October 27, 1995 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert E. Tilton, Topeka, Kansas
Marcia L. Yates, Kansas City, Missouri
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director